

REMARKS

This amendment is offered in response to the Office Action of November 14, 2002.

In response to the rejection of the specification under 37 C.F.R. §1.71 and the rejection of the claims under 35 U.S.C. §112, first paragraph, the Applicant has amended Claim 6 to recite “said reclosable zipper being interlocked during said step of inserting said slider”. It is respectfully submitted that this language is fully supported by page 6, lines 9-11 of the specification.

In the Office Action, claims 6-8 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 09/915,100. The Applicant will consider filing a terminal disclaimer, if necessary, in the event that the application is otherwise in condition for allowance.

Claims 6-8 were rejected under 35 U.S.C. §103 as being unpatentable over the Herz reference (U.S. Patent No. 3,790,992). Similarly, Claims 6-8 were rejected under 35 U.S.C. §103 as being obvious over the Herz reference in view of the Machacek reference (U.S. Patent No. 6,047,450) or the Richardson reference (U.S. Patent No. 5,442,838) or the Herrington reference (U.S. Patent No. 5,067,208) or, alternatively, the Machacek reference or Richardson reference or Herrington reference in view of the Herz reference.

In response, claim 6 has been amended to clarify that the claimed steps of removing and inserting the slider occur after the claimed step of “filling each of said packages”. The Applicant respectfully but strenuously traverses the Examiner’s statement that “The timing of the filling operation is not critical and it would have been obvious to one of ordinary skill in the art to fill the bags either before or after the application of the slider”. That is, the Herz reference discloses the manufacture of an unfilled bag, where the bag is later filled, perhaps manually by the

consumer. Herz never contemplated filling the bag on a form fill and seal machine. Herz is directed at a slider bag with an end seal and, as such, has nothing to do with form fill and seal. The bag of the Herz reference was designed to be filled later by the consumer and was not intended or designed to be made on automatic form fill and seal machinery. There is no provision in the Herz reference for producing a form fill and seal bag, which, to fill the bag, would have required automatic opening and closing of the zipper by using the slider.

The remaining cited references appear to disclose specific zipper and slider configurations, but teach nothing to resolve the differences between the presently claimed invention and the cited Herz reference.

It is therefore respectfully submitted that Claims 6-8 are in immediate condition for allowance.

For all of the reasons above, it is respectfully submitted that the presently pending claims are in immediate condition for allowance. The Examiner is respectfully requested to withdraw his rejections of the claims, to enter the present amendment, to allow the claims, and to pass this application to early issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald Levy", with a stylized flourish extending to the right.

Gerald Levy
Registration No. 24,419

Ronald E. Brown
Registration No. 32,200

Pitney, Hardin, Kipp & Szuch, L.L.P.
685 Third Avenue
New York, New York 10017
212-297-5800